criminal case, then on trial, was an infringement of the State constitutional guaranty of freedom of speech.[8] But the same court held in a later case,[9] without alluding to the previous case, that the State has the right to license, to regulate, and to prohibit exhibitions, shows, and places of amusement. The two cases can be distinguished on the ground that the legislature only, and not the judiciary, possesses authority to regulate theaters. Even the liberty of the press is limited, but not abridged, by laws passed in the exercise of the police power, for the protection of the morals of the people.[10] Any reasonable exaction or denial of licenses and incidental regulation of theatrical performances is regarded as a proper exercise of the police power.[11] Furthermore, since the defendant corporations devote their films to a use in which the public is interested, they must for that reason submit to the control of the public acting through governmental agencies as long as they continue such use.[12]

The right of a State to regulate the use of moving picture films has been upheld repeatedly.[13] An act providing for the regulation of moving picture machines and for the appointment of a "board for examining moving picture operators" is constitutional.[14] An ordinance requiring those engaged in exhibiting moving pictures to secure a permit for the exhibition of pictures, and forbidding the chief of police to issue such permit for the exhibition of any obscene or immoral pictures, was held constitutional, even though there is no provision for an appeal to a court from his decision.[15]

A censorship, then, reasonably related to the exhibition of films within the State, is within the police power of the State, and the statute so providing does not abridge the Federal or usual State constitutional provisions safeguarding the freedom of speech and of the press.

THE VALIDITY OF LEGISLATIVE REGULATION OF THE CONSTITUTIONAL RIGHT OF TRIAL BY JURY.—The right of trial by jury as a constitutional guarantee is intended to preserve this right as it existed at common law at the time of the adoption of the Constitu-

---

[8] Dailey *v.* Superior Court, 112 Cal. 94, 44 Pac. 458, 53 Am. St. Rep. 160.

[9] Greenberg *v.* Western Turf Ass'n, 148 Cal. 126, 82 Pac. 684.

[10] 2 STORY, CONST., 5 ed., § 1880.

[11] Baker *v.* Cincinnati, 11 Ohio St. 534; COOLEY, CONST. LIM., 7 ed., § 884.

[12] Atlantic Coast Line R. R. *v.* City of Goldsboro, 232 U. S. 548.

[13] Higgins *v.* Lacroix, 119 Minn. 145, 137 N. W. 417; Dreyfus *v.* City of Montgomery, 4 Ala. App. 270, 58 South. 730; Lauelle *v.* Bush (Cal.), 119 Pac. 953.

[14] State *v.* Loden, 117 Md. 373, 83 Atl. 564, 40 L. R. A. (N. S.) 193.

[15] Block *v.* City of Chicago, 239 Ill. 251, 87 N. E. 1011, 130 Am. St. Rep. 219.

tion.[1] Even then, and so now, a certain class or grade of offenses called petty offenses could be proceeded against without a jury in any tribunal legally organized for that purpose.[2] But legislative regulation of trial by jury in case of offenses other than petty misdemeanors must comply with two conditions in order that the statute be constitutional. First, the cause must not be of too grave a nature, and second, there must be from the court with this legislative jurisdiction an unobstructed and unfettered right of appeal to jury trial.[3]

In civil cases it is generally held that where a statute secures trial by jury on appeal there is no violation of a constitutional provision guaranteeing a right of jury trial.[4] This is upon the ground that the party, if he thinks proper, can have his case decided by a jury before it is finally settled. Also the distinction seems well taken that in civil cases jury trial is a privilege to be asserted, while in criminal cases it is an unconditional immunity from sentence or punishment for crime until at the hands of a jury a verdict of guilty is rendered.

With respect to criminal cases there are two rules on this question, the rule of the majority of the State courts and the Federal court rule. According to the former the constitutional right to a jury trial is satisfied if an appeal may be taken from a conviction at a summary trial without unreasonable restrictions, to a court of general jurisdiction where jury trial may be had.[5] An objection to this doctrine is that it puts the burden of obtaining a jury trial upon the defendant instead of the State. It compels him to appear and demand a jury trial without which the constitution declares he shall not be condemned. The Federal rule holds that the right of trial by jury is not satisfied where such trial is not accorded in the court below.[6] There are two main arguments in support of this rule. The appeal in this instance to jury trial is an appeal of a question of fact and to allow an appeal of this nature is beyond the power of the courts. For the appeal from a subordinate tri-

---

[1] See 2 STORY, CONST., 5 ed., § 1779; COOLEY, CONST. LIM., 6 ed., 389.

[2] People *ex rel.* Murray *v.* The Justices, 74 N. Y. 406; *In re* Cox, 129 Mich. 635, 89 N. W. 444; State *v.* Sexton, 121 Tenn. 35, 114 S. W. 494. Likewise contempt, court martial and commitment of a minor child to an industrial school are not cases where trial by jury is claimable as a matter of right. *Ex parte* Terry, 128 U. S. 289; Rawson *v.* Brown, 18 Me. 216; *Ex parte* Peen, 51 Cal. 280.

[3] Sacco *v.* Wentworth, 37 Me. 165, 58 Am. Dec. 786; Jones *v.* Robbins, 8 Gray (Mass.) 329; *In re* McSoley's Liquors, 51 R. I. 608, 10 Atl. 659.

[4] Capitol Traction Co. *v.* Hof, 174 U. S. 1. *Contra* to this rule in criminal cases, the requirement of bond is not an unreasonable restriction upon the right of appeal. Beers *v.* Beers, 4 Conn. 535, 10 Am. Dec. 186.

[5] Brown *v.* Epps, 91 Va. 726, 21 S. E. 119, 27 L. R. A. 676; Jones *v.* Robbins, *supra;* Alford *v.* State, 170 Ala. 178, 54 South. 213. *Contra,* State *v.* Garry, 68 N. H. 497, 38 Atl. 272, 38 L. R. A. 228.

[6] Callan *v.* Wilson, 127 U. S. 540; State *v.* Garry, 68 N. H. 495, 37 Atl. 272, 38 L. R. A. 228.

bunal's determination of fact is entirely a creature of statute.[7] It would clearly seem, however, that the rule as here laid down is based on the grounds that there has already been a determination of fact by a jury in the lower court. Moreover in regard to the point in question the jurisdiction of the court and the right of appeal is created by statute. The second argument is that the accused goes to trial before a petit jury without ever having his case tried before the grand jury. The right of State legislatures to pass laws of this nature has been distinguished from the right of Congress to pass similar statutes.[8] Since the Federal Government is a government of enumerated powers. Congress can do nothing except what the Constitution either directly or by reasonable construction authorizes it to do. State legislatures, on the other hand, possess all legislative powers not prohibited by the constitution. Thus the presence of a jury in United States courts becomes a jurisdictional question and as Mr. Justice Harlan said in *Callan* v. *Wilson*,[9] "a verdict of conviction not based upon a verdict by a jury is void."

Even in jurisdictions which hold as a general proposition that a statute is valid which, while it deprives a person of jury trial in the first instance, provides for jury trial on appeal, it is held that if the statute imposes unreasonable conditions on the right to a trial by a jury on appeal it is unconstitutional.[10] In the recent case of *Vetock* v. *Hufford* (W. Va.), 82 S. E. 1099, the general rule is laid down as to what is an unreasonable restriction. Here the jurisdiction of a justice of the peace over the misdemeanor of carrying a concealed weapon was upheld but the requirement of a recognizance bond as a condition for appeal to jury trial was held an improper restriction on the right. Where the option of commitment or recognizance is given the defendant his right of appeal to a jury trial is not unreasonably restricted.[11]

OWNERSHIP OF LAND UNDERLYING NAVIGABLE WATERS.—The common law and present English doctrine of the ownership of the bed of navigable streams was early laid down in a case in which the court said that every river is a royal river as far as the tide in it ebbs and flows, because so far it partakes of the nature of the sea, and is an arm of the sea, and the sea is the king's.[1] But inland

---

[7] U S. *v.* Wonson, 1 Gall. 5, Fed. Cas. No. 1675.
[8] Brown *v.* Epps, *supra*. [9] 127 U. S. 540.
[10] Sullivan *v.* Adams, 69 Mass. 476. In Sacco *v.* Wentworth, 37 Me. 165, 58 Am. Dec. 786, a heavy recognizance bond made the sole condition for the right of appeal was held void, though the right of appeal is preserved. State *v.* Gurney, 37 Me. 156, 58 Am. Dec. 782.
[11] State *v.* Everett, 14 Minn. 330.
[1] Case of the Royal Fishery of the Banne, Davis 55; Bulstrode *v.* Hall, 1 Sid. 148. A grant by the King, however, in derogation of the public right is invalid. Williams *v.* Wilcox, 8 Adol. & El. 314.